

GOVERNOR'S MINED LAND RECLAMATION ADVISORY COMMITTEE
November 21, 2002

Present

Roger Jones
Tommy McAmis
Dan McCoy
Phil Shelton
Les Vincent

Absent

Ray Burns
Patricia Martin
Harry Meador
Candace Morgan
Vanessa Perry
Mike Thomas

Also Present

Dink Shackelford
Sandy Smith
Roger Williams

NOTE: There was not a quorum for this meeting. The agenda items were discussed for informational purposes.

A meeting of the Governor's Mined Land Reclamation Advisory Committee was held at the Department of Mines, Minerals and Energy Office on November 21, 2002. Chairman Roger Jones called the meeting to order. Mr. Jones called for a motion to approve the minutes as written of the March 28, 2002 meeting. The minutes were unanimously approved.

Abandoned Mine Land Title IV Funding Update

Roger Williams provided an update on the Abandoned Mine Land (AML) fee extension legislation. Nick Rahall, member of the West Virginia House of Representatives, introduced two bills. One was a streamline bill that dealt only with the bailout of the Combined Benefit Fund. This has been in legislation since 1990 and involved transfer of interest earned from the AML fund to the Combined Benefit Fund. The House of Representatives passed this bill, but the Senate or the last session of Congress did not consider it.

The second bill Mr. Rahall introduced was a comprehensive reform of the Title IV Program, dealing with everything from priorities to the fee structure. When the program was first passed, 20% of the fund was allocated for reclamation of abandoned mine land by the Natural Resource Conservation Service (NRCS) under a Reclamation of Abandoned Mines Program (RAMP). Congress did not appropriate money out of the Title IV Program for the NRCS funding. Currently, the fund has approximately \$1.5 billion unallocated, drawing interest. Mr. Rahall's bill calls for the 20% of money allocated for NRCS to be transferred into grants for states and Indian tribes for their reclamation programs.

The Interstate Mining Compact Commission (IMCC) is preparing a draft bill for the Title IV Program. This bill calls for an extension of the program to 2016. It leaves the tax structure the same; makes some correcting amendments; and calls for the transfer of the 20% RAMP money into the State fund. The Citizens Coal Council has also drafted a bill. The current sunset date on the AML fee collection is September 30, 2004. There are two more sessions of Congress and they will either extend the program or it will lapse.

Interstate Mining Compact Commission Amicus Brief Haden II Decision

Les Vincent discussed the IMCC Amicus Brief Haden II Decision. A citizens' environmental group, Kentuckians for the Commonwealth, filed suit against John Rivenburgh, Colonel, District Engineer, U.S. Army Corps of Engineers, Huntington District. The case involved the proposed placement of excess spoil fills to be placed in several valleys by a Martin County coal company.

Judge Haden ruled in favor of the environmental group. The Judge issued an injunction against the Army Corps of Engineers (Huntington District) prohibiting them from approving the Clean Water Act, Section 404 permits that allow placement of fills in intermittent and perennial streams. The Federal Government, National Mining Association, IMCC, Virginia, and other states have filed briefs appealing the Haden II decision. Oral arguments will be scheduled sometime in December, 2002. If the decision is upheld at the appellant court level, it will become the law in Virginia.

Other topics of discussion among the Committee members included the Haden I decision; Environmental Impact Statement (EIS) studies; difficulties/costs of getting a permit; mountaintop removal/valley fills; and expiration dates of nationwide 21 permits under Section 404 of the Clean Water Act.

Interstate Mining Compact Commission/Office of Surface Mining Bonding Initiative

Butch Lambert provided background on the current bonding initiative - how it all came about and the status as of the last IMCC meeting.

Butch referenced an IMCC meeting held in January, 2002 in Washington, D.C. with OSM, the Environmental Protection Agency, and representatives of surety companies. Five issues were discussed at the meeting:

- bonding requirements under SMCRA
- bonding issues and problems (where are we with the present bonding scheme)
- bonding framework and what the required bonds actually cover
- concerns with long-term treatment and liability issues associated with long-term treatment
- what are the challenges before us and how can we prepare for them

OSM issued a notice of a tentative proposed rulemaking on the level of treatment to use in calculating the financial assurance for long-term bonding. Comments were requested and will be considered prior to publishing a draft proposed rule.

IMCC held a meeting in Reston, Virginia in July. During the meeting, a representative from Travelers Insurance stated their company would no longer be issuing bonds dealing with long-term AMD treatment. The representative also commented that one problem with bonding is that regulatory authorities are reluctant to release bonds. The IMCC states disagree with the assumption and encourage industry to submit their bond requests. From October, 2001 to the present, Virginia has received 150 bond reduction requests, and only three have been denied.

Butch referenced topics discussed during a conference call in September, 2002:

- OSM was asked to give the states direction on the types of bonds that could be required and separate those bonds, meaning one bond for reclamation and one for water issues.
- The Pennsylvania Trust Fund, a non-profit organization and managed by an independent organization. The IMCC is doing research on the Trust Fund and may recommend using this option for handling the treatment of long-term discharges.
- Update of current regulations as they relate to bond release.

Two non-agenda items, budget cuts and electronic permitting, were discussed due to questions from Chairman Jones. There being no further discussions, Mr. Jones made a motion that the meeting be adjourned.